

September 9, 2003

Ms. Madeleine H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W. TW-A325
Washington D.C. 20554

Re: Ex-Parte Comments on Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket Nos 02-33 & 01-337.

Dear Ms. Dortch,

Attached for inclusion in the record of the above-referenced proceeding is a declaration of Francois D. Menard.

Respectfully submitted,

Francois D. Menard

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,
CC Docket Nos 02-33 & 01-337.

Declaration of Francois D. Menard

The CRTC has recently engaged in a number of regulatory initiatives to improve competition in the provision of broadband services in Canada.

In December 2002, the CRTC issued a Decision (CRTC Decision 2002-76) in which it considered the affiliated company through which Bell Canada provided ADSL services to be improperly classified by Bell Canada as a non-dominant carrier. As a result, the CRTC Ordered Bell Canada to file tariffs for all services provided by its subsidiary BCE Nexxia inc. for which Bell Canada was not subject of a forbearance order, this with the exception of ADSL wholesale, for which the CRTC granted an exception. This would cause BCE Nexxia inc. to operate for the sole purpose of providing ADSL wholesale to ISPs, purchasing services at existing tariffed rates and wholesaling services to ISPs at below tariffed rates.

Bell Canada decided on April 1st 2003 to shut down BCE Nexxia inc. As a result of this action, the CRTC issued a letter decision requiring Bell Canada to file tariffs for the arrangements which it had now inherited from the dissolution of BCE Nexxia inc.

The CRTC has since engaged into a process for the setting of an interim rate regime for ADSL which would allow Bell Canada to be compliant with the CRTC's tariff regulations.

As part of this record, competitors in Canada have argued at great length on the public record of Bell Canada TN6622 available at: <http://www.crtc.gc.ca/8740/eng/2001/b2-6622.htm> that the ADSL services provided by Bell Canada are essential facilities which must be priced at the mark-up allowed for such services, that is Phase II cost + 15%.

Of interest to the American people are the rates which would follow from Bell Canada's evidence of its own internal costing of ADSL services, when limited to a 15% mark-up. These rates are presented in Attachment 1.

Arguing that the cost structure of Bell Canada to provide ADSL services would not be very different from the cost structure to US ILECs, the current pricing of ADSL private carriage arrangements by US ILECs to US ISPs demonstrates the anticompetitive nature of such arrangements. Not only do the current ADSL wholesale rates of US ILECs appear to be generally priced way above the rates sought by Bell Canada, which

themselves include mark-up which are unreasonable by any account, but when compared to the pricing of Bell Canada ADSL infrastructure after being recognized as essential facilities, with a 15% mark-up cap, the current ADSL wholesale rates of US ILECs are even more unreasonable. They appear to be designed with the sole objective of frustrating competitive entry and to sustain the existing price squeeze which results from retail rates which are significantly lower than wholesale rates.

The present intervenor remains available as a witness should the Commission deem appropriate to seek assistance in understand the current DSL proceedings in Canada.

Best regards,

Francois D. Menard
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See attachment 1 below:

Canadian Dollars – September 2003 – (1.38\$ CDN = 1\$ US)

Service Component	Bell Canada Monthly Cost	Proposed TN 6622 – Item 5400			Installation	Rates at Phase II cost + 15%, non contracted
		Non-Contracted	1 year	2 years		
HSSPI DS-3 ⁱ	\$525.77	\$900	\$875	\$850	\$600	\$604.64
HSSPI OC-3 ⁱⁱ	\$1392.64	\$2400	\$2200	\$2000	\$600	\$1601.54
HSSPI OC-12 ⁱⁱⁱ	\$4931.76	\$7600	\$7400	\$7200	\$600	\$5671.52
HSSPI 100M Ethernet ^{iv}	\$511.19	\$875	\$850	\$800	\$600	\$587.89
HSSPI 1000M Ethernet ^v	\$965.33	\$1700	\$1600	\$1500	\$600	\$1110.13
AHSSPI DS-3 ^{vi}	\$264.54	\$500	\$450	\$400	\$600	\$304.22
AHSSPI OC-3 ^{vii}	\$611.39	\$1100	\$1000	\$950	\$600	\$703.10
AHSSPI OC-12 ^{viii}	\$2157.13	\$3600	\$3400	\$3200	\$600	\$2480.70
AHSSPI 100M Ethernet ^{ix}	\$511.19	\$875	\$850	\$800	\$600	\$587.87
AHSSPI-1000M Ethernet ^x	\$965.33	\$1700	\$1600	\$1500	\$600	\$1110.13
ADSL Access-H – Residential ^{xi}	\$10.95	\$22.50	\$21.50	\$20.50	\$7.5	
ADSL Access-H – Business ^{xii}	\$10.95	\$30.00	\$28.00	\$26.00	\$7.5	\$13.45
ADSL Access-R (Remotes-based) ^{xiii}	\$12.41	\$17.40	\$16.75	\$16.10	\$15.50	\$195
PVC – Residential ^{xiv}			\$4.50	\$4.25	\$4.00	
PVC - Business ^{xvi}	\$2.20 ^{xv}		\$5.00	\$4.75	\$4.50	\$2.55
Additional PVCs (maximum 3)						
Loop Admin and Support ^{xvii}	\$2.95	\$3.39				\$4.00
POTS Splitter at Customer Premise ^{xviii}	\$4.79				N/A	Q
ADSL Access GAS – Res. 1/1.5M ^{xix}	\$13.92					\$16.01
ADSL Access GAS – Bus. 1/1.5M ^{xx}	\$13.92					
ADSL Access GAS – Res. 3.0M ^{xxi}	\$15.38					
ADSL Access GAS – Bus. 3.0M ^{xxii}	\$15.38					
ADSL Access – HAS Res. 3M ^{xxiii}	\$15.48 ^{xxv}					
ADSL Access – HAS Bus. 3M ^{xxv}	\$15.48 ^{xxvi}					

Q = Revised 8 September 2003.

ⁱ See Bell(CRTC)9Jan03-12 TN 6622 Abridged, Revised 11 August 2003, Supplemental and Attachment 1.

ⁱⁱ See Bell(CRTC)9Jan03-12 TN 6622 Abridged, Revised 11 August 2003, Supplemental and Attachment 1.

ⁱⁱⁱ See Bell(CRTC)9Jan03-12 TN 6622 Abridged, Revised 11 August 2003, Supplemental and Attachment 1.

^{iv} See Bell(CRTC)9Jan03-12 TN 6622 Abridged, Revised 11 August 2003, Supplemental and Attachment 3.

^v See Bell(CRTC)9Jan03-12 TN 6622 Abridged, Revised 11 August 2003, Supplemental and Attachment 3.

^{vi} See Bell(CRTC)9Jan03-18 TN 6622 and Attachment 1 Abridged Supplemental.

^{vii} See Bell(CRTC)9Jan03-18 TN 6622 and Attachment 1 Abridged Supplemental.

^{viii} See Bell(CRTC)9Jan03-18 TN 6622 and Attachment 1 Abridged Supplemental.

^{ix} See Bell(CRTC)9Jan03-18 TN 6622 and Attachment 1 Abridged Supplemental.

^x See Bell(CRTC)9Jan03-18 TN 6622 and Attachment 1 Abridged Supplemental.

^{xi} See Bell(CRTC)9Jan03-4 TN 6622, Abridged, Supplemental and Attachment 1.

^{xii} See Bell(CRTC)9Jan03-4 TN 6622, Abridged, Supplemental and Attachment 1.

^{xiii} See Bell(CRTC)9Jan03-4 TN 6622, Abridged, Supplemental and Attachment 1.

^{xiv} See Bell(CRTC)9Jan03-18 TN 6622 Abridged, Revised 11 August 2003, Supplemental.

^{xv} PVC costs assumed as the same level mark-up as applied to the Access-H Residential using the year 1 rate.

^{xvi} See Bell(CRTC)9Jan03-18 TN 6622 Abridged, Revised 112 August 2003, Supplemental.

^{xvii} See Bell(CRTC)9Jan03-1 TN 6622, Attachment 1 Supplemental.

^{xviii} See Bell Canada TN 6767, HAS Appendix, table 2.

^{xix} Assumes 50kbps per end-user; See TN 6767 Attachment 1: Economic Evaluation for GAS ADSL Service, 8 August 2003.

^{xx} Assumes 50kbps per end-user; See TN 6767 Attachment 1: Economic Evaluation for GAS ADSL Service, 8 August 2003.

^{xxi} Assumes 50kbps per end-user; See TN 6767 Attachment 1: Economic Evaluation for GAS ADSL Service, 8 August 2003.

^{xxii} Assumes 50kbps per end-user; See TN 6767 Attachment 1: Economic Evaluation for GAS ADSL Service, 8 August 2003.

^{xxiii} Assumes 80kbps per end-user; See TN 6767 Attachment 2: Economic Evaluation for HSA ADSL Service, 8 August 2003, paragraph 12. Assumes 70% metropolitan transport and 30% regional transport.

^{xxiv} Does not include the cost for POTS Splitter at Customer Premise.

^{xxv} Assumes 80kbps per end-user; See TN 6767 Attachment 2: Economic Evaluation for HSA ADSL Service, 8 August 2003, paragraph 12. Assumes 70% metropolitan transport and 30% regional transport.

^{xxvi} Does not include the cost for POTS Splitter at Customer Premise.